

General Information Letter: The Employee Retirement Income Security Act does not prohibit state income taxation of Voluntary Employee Benefit Associations. Letter Ruling IT 93-0187 rescinded.

October 4, 2001

Dear:

In 1993 you wrote to the Illinois Department of Revenue in order to request information regarding whether the Employee Retirement Income Security Act (ERISA) preempted Illinois from taxing the unrelated business income of Voluntary Employee Benefit Associations (VEBA's). Your letter to the Illinois Department of Revenue, dated December 3, 1993, stated the following:

The purpose of this letter is to request a ruling from the Illinois Department of Revenue regarding unrelated business income received by a voluntary employee beneficiary association ("VEBA").

xx, FEIN xx-xxxxxxx, is a voluntary employee beneficiary association ("VEBA"), under Section 501(c)(9) of the Internal Revenue Code of 1986, as amended, (the "Code"), and, as such, is an organization exempt from federal income tax under Section 501(a) of the Code. The Plan is an employee welfare benefit plan covered by ERISA.

Prior to the Tax Reform Act of 1994, the IRC Sec. 511 tax on unrelated business taxable income did not apply to a voluntary employee beneficiary association. The Tax Reform Act of 1984 amended the definition of unrelated business taxable income under Sec. 512 to include unrelated business income of Sec. 501(c)(9) organizations.

Ill. Rev. Stat. ch. 120, para. 5/205 states: "The base income of an organization which is exempt from the federal income tax by reason of Section 501(a) of the Internal Revenue Code...shall be its unrelated business taxable income as determined under Section 512 of the Internal Revenue Code..."

Section 514 of the Employee Retirement Income Security Act (ERISA) provides that ERISA "...shall supersede any and all State laws as they may now or hereafter relate to any employee benefit plan..." covered under ERISA

We are requesting a ruling as to whether the unrelated income of the xxxxxxxxxxxxxxxxxxxx xxxxxx xx is subject to Illinois income taxes or is Illinois preempted by ERISA Section 514 from taxing the unrelated business income of the above named trust.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Please be advised that this correspondence is a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

The Illinois Department of Revenue responded to your December 3, 1993 correspondence with its GIL No. IT 93-0187, dated December 21, 1993. Said GIL indicated the Department's determination that Illinois is preempted by §514 of ERISA from taxing "any employee benefit plan described in §1003(b)..." The GIL further indicated that it was the Department's position that the unrelated business income of a VEBA is therefore not subject to Illinois income taxation.

Please be advised that GIL No. IT 93-0187, dated December 21, 1993 has been rescinded.

It is now the Illinois Department of Revenue's determination that Section 205 of the IITA is not preempted by Section 514 of ERISA, and the unrelated taxable business income of a VEBA, as determined under Section 512 of the Internal Revenue Code, shall be such VEBA's base income in Illinois, without deduction for the tax imposed by the IITA. The Department's position as described in IT 90-0073, IT 93-0017 and IT-0187 has been rescinded, and the regulations pertaining to income not exempt from Illinois income taxation will be amended to reflect the Department's determination. (See 86 Ill. Adm. Code 100.2470(h)).

Taxpayers that relied upon the Department's letter rulings, IT 90-0073, IT 93-0017 and IT 93-0187, prior to the effective date of the amendment to 86 Ill. Adm. Code 100.2470(h), shall not incur liability for taxes or penalties pursuant to Section 4(c) of the Taxpayers' Bill of Rights Act, 20 ILCS 2520/1 *et seq.*

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, or require additional information regarding this issue, please do not hesitate to contact our office.

Sincerely,

Matthew S. Crain
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